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THE PERCEIVED THREAT TO PROPERTY RIGHTS AS A CONTEMPORARY POLITICAL ISSUE IN ALBERTA

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The economic uncertainty faced by most Albertans during 1981 and early 1982 was psychologically augmented by the unnerving prevalence of farm[1] and mortgage foreclosures,[2] bankruptcies,[3] sky-rocketing interest rates,[4] and record-high unemployment.[5] Inevitably, this economic uncertainty took root in the minds of many people as a non-specific sense of anxiety and powerlessness as well as a general anger at the central government and its seeming inability to manage the economy.

It was the Western Canada Concept, a political party of rural 'grass-roots' support which seized upon these feelings, giving them both a shape and an outlet through which they could be expressed. In short, the W.C.C. became the effective authors of an issue which seemed at once to capture and create Alberta's sense of its own susceptibility. On the basis of assertions and claims made mainly by the W.C.C., people across the province began to suspect that their property rights were not adequately safeguarded from the perceived socialistic impulses of the federal government.

In this paper, I propose to explore a few of the philosophic reasons why such a threat to property rights can become such a highly charged emotional issue. Second, I will indicate the central arguments upon which the W.C.C. bases its assertion that the property of Albertans is in peril. Finally, I will suggest reasons why these arguments fail to convince many Albertans. This analysis will reveal

the volatile foundation upon which the property issue is based and its critical dependence on a fragile emotional climate of trepidation and frustration in the province.

Property may be defined as:

> That which is peculiar or proper to any one person; that which belongs exclusively to one. In the strict legal sense, an aggregate of rights which are guaranteed and protected by government.... The highest right a man can have to anything....The word is also commonly used to denote everything which is the subject of ownership. It extends to every species of valuable right and interest, and includes real and personal property, easements, franchises, and incorporeal hereditaments, and includes every evasion of one's property rights by actionable wrong....Property, within constitutional protection, denotes group of rights inhering in citizen's relation to physical thing, as right to possess, use and dispose of it. 6

It is not surprising that Albertans could easily be made anxious about the security of their property given the inheritance of an ideological stance which has affirmed and reaffirmed the individual's right to property for centuries. Edmund Burke, for example, has eloquently upheld property as a means of perpetuating society.[7] John Locke has defended property as the individual's fundamental and natural right, stating,

> Though the earth and all inferior creatures be common to all men yet every man has a property in his own person; this nobody has a right to but himself. The labor of his body and the work of his hands...are properly his....For this labor being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left in common for others. 8

But while the straightforward belief that the individual has a right to his or her property is fundamental, the high value placed on property stems mainly from its relationship to freedom and individualism.

Walter Lippman, a twentieth-century social theorist, states a belief shared by many people in the province:

> the only dependable foundation of personal liberty is the economic security of private property.... There is no surer way to give men courage to be free than to insure them a competence upon which they can rely. 9

While Lippman clearly does not equate property with freedom, he does suggest that the right to own property is an indispensable catalyst to the fulfillment of personal liberty and economic independence. Leopold Kohr, another twentieth-century social theorist, adopts a stance which echoes that of Lippman, though the former's language is more forceful and unequivocal. Kohr asserts:

> What I suggest is that one must own property to be free....Freedom is an active, not a passive, concept. It means freedom of will, freedom of disposition, freedom of inclusion and freedom of exclusion. And by definition, this cannot be had without property. 10

Like Lippman, Kohr is unwilling to divorce the institutions of property and freedom; for Kohr, they are related (and justified) on a philosophical level revolving around the concept of individualism.

It is not uncommon to find that Albertans who support the W.C.C. also hold the individualist conception that the person is complete

unto his or herself and that society is the tool through which the individual fulfills a personally chosen purpose compatible with the law."[11] The right to property is seen as an expression of the person's freedom and as an institution which, in turn, promotes and protects individualism. The following comment crystalizes this particular view of property:

> private property is an extension of the person, and thus part of the person. As an extension of the person, private property may be attacked in indirect aggression against the person. Successful aggression against private property diminishes, dehumanizes the person. [12]

Due then to the social value attached to property as well as the close relationship it bears to freedom and individualism, the W.C.C. has an assiduous audience when it claims that property rights have been lost to a grasping central government. But is is the belief that an attack on property is comparable to an attack on the person who owns that property which helps transform into a source of incitation the W.C.C.'s position that the Canadian constitution fails to protect property rights. For without question, the perceived threat to property has created a pitch of emotional outrage as few political issue in Alberta have ever achieved.

Ruth Gorman, a Calgary lawyer, is the W.C.C.'s most widely quoted source on the subject of how the constitution fails to protect property rights.[13] Her basic argument stemming from an interpretation of the constitution is simple: property rights are not expressly

mentioned in the constitution of Canada and are therefore not guaranteed. Gorman gives no credence to the protection offered by section 26 of the Charter of Rights and Freedoms which states:

> The guarantees in this Charter of certain rights and freedoms shall not be construed as denying the existance of any other rights that exist in Canada.

As a result of this section, argues Gorman, the existence of property rights will be recognized but not enforced or guaranteed.[14]

As a tangent to this strictly narrow reading of the constitution, Gorman quotes section 51:

> The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the Charter is of no force or effect.

This "sneaky" section, Gorman concludes, renders property rights inconsistent with the Charter because these rights are not mentioned. Therefore, the individual's traditional rights to property are of no force or effect.[15]

While Gorman's position is based, in part, on an interpretation of the effects of the constitution itself, her most critical argument is grounded in the conviction that the government in Ottawa has never had the best interests of Westerners at heart and is intent only on serving Quebec and Ontario at the expense of Western provinces.

Gorman notes, as an example, that in the last election, Trudeau secured the vote of Ontarians by promising them cheap oil "at Alberta's expense" and by promising bilingualism to Quebec in the federal civil service and Crown Corporations throughout Canada. On this point, she asserts that

> Albertans will be forced to pay the cost of ... services they don't even use. And it is estimated that in Alberta alone 40,000 people could lose their jobs if provisions of the new constitution...are enforced. 16

Gorman also warns that

> Even now, Westerners are an ineffective minority, lacking the votes to protect their interests. Imagine what will happen to the property of yourselves, your co-ops and companies, and, of course, your provinces once this constitution is in place and the guarantee of property rights is gone. You will face a terrible situation. 17

Only if the reader shares her profound mistrust of and bitterness against the federal government can one accept as reasonable Gorman's implication in her article "Constitution condemned" that the central government had an iniquitous purpose in mind when it did not expressly mention the individual's right to property is section two of the Charter of Rights and Freedoms. For while Gorman does not expressly state that the central government acted nefariously, she suggests as much in the following assertion:

> The appropriate place (to guarantee property rights) would have been in (section 2)....There they copied

> Diefenbaker's Canadian Charter of Rights word for word until they got to property rights, and then they just did not put them in. Nor are they anywhere else in the constitution. 18

To reinforce her point, Gorman labels as naive the conviction that past laws and the integrity of elected members of Parliament will guarantee property rights even if the constitution does not expressly do so. Moreover, she argues that not only are property rights jeopardized, the equalization provision of the constitution allows the central government to strip away the wealth of the richer provinces. This section, which states that the provincial and federal governments are jointly committed to promote equal opportunities for the well being of Canadians, is described by Gorman as being "hidden away". Gorman is certain that through section 36,

> Ottawa can take away from one province (or even person) and give to another, including itself, if it believes that such action will promote "equal opportunities" or further economic development that reduces "disparity of opportunities."
>
> Opportunities are not a factual, provable reality. They are just guesses about the future. The new constitution ought to read that property can be "equalized" at Ottawa's will, but that would have alerted an unsuspecting public. 19

It is not unfair to suggest, in light of Gorman's comments, that the foundation of the property rights issues in not in constitutional law or analytic argumentation but on so extreme a mistrust of the central government that the cumulative force of common law protecting the individual's right to property is utterly dismissed. Also

dismissed is the commonly recognized jurisprudential concept that once a right is recognized, enforcement of that very right flows naturally. In short, Gorman is so uncertain of the integrity of the central government that she would reject out of hand fundamental legal principles before she would accept that section 26 protects the individual's right to property.

One may, of course, persuasively argue that people like Gorman are justifiably anxious about their property rights because they see property not as a natural right but as a "deliberate construction by society"[20] and hence are concerned that should this construction ever erode, Albertans stand to lose possessions they have worked long and hard to accumulate. But this, perhaps, is giving too much authenticity to the property issue articulated by Gorman. Because neither the W.C.C. nor Gorman can provide an example of the central government legitimizing through the constitution an infringement on property rights and because neither have demonstrated that, in wake of the constitution, all past case law upholding the right to property will be rendered null and void, the W.C.C. cry that property rights are in peril is , at best, premature and, at worst, opportunistic. On one level, it is clearly a means for the W.C.C. to discredit the present provincial government for 'selling out' Albertans during the constitutional negotiations and hence a means to future political power.

Despite the lack of tangible evidence put forth by the W.C.C. and Ruth Gorman, the provincial government has had a difficult time convincing its electorate that property rights are secure. The position which the provincial government puts forward is threefold: first, property rights are protected by the fact that jurisdiction over property has been placed firmly with the province. Hence, the Alberta Bill of Rights, which guarantees to the individual 'enjoyment' of his or her property, is adequate and effective. Second, property rights are guaranteed by common law dating back to the Magna Carta. Third, property rights are protected by section 26 of the Charter of Rights and Freedoms. According to the government, "This means the rights that Canadians have enjoyed in the past, such as the rights of property, are protected and preserved."[21]

Many Albertans, however, are not listening to the provincial government on the point of property rights. While it is impossible to guess at all the reasons for this, letters to the editor provide a clue which explains, partially at least, why Albertans have rejected the calm, legal arguments put forward by the provincial government.[22] The following excerpt from a letter to the editor capsulizes one reason for this rejection: Many Albertans have such a fundamental suspicion, even hatred, of the Prime Minister that they are categorically repulsed by anything he does. The writer states:

> Pierre Trudeau, long-time socialist and a liberal in name only, has a vision of Canada as a French-

> speaking socialist republic. His new constitution, which eliminates as a constitutional right such things as the ownership of property, will enable him to proceed, full ahead (sic) towards his goal. And it is not just the constitution alone, for this is merely the culmination of years of steady encroachment on the free enterprise system....24

In fact, anti-Trudeau sentiment has reached such a level in the province that an Edmonton business person has founded "The People's Movement to Stop Trudeau." The aim of the movement is to see Trudeau turned out of office by the end of June.

It is one matter to mistrust the central government. It is quite another to regard with suspicion one's own provincial government. The following quotation from another letter to the editor shows why some people are refusing to accept assurances from the Premier of their own Legislative Assembly: Premier Lougheed is a victim of guilt by association.

> Lougheed has, in fact, failed the Canadian people, when he saw fit to sign the so-called constitutional agreement. His signing of this, without the inclusion of the right of the individual to own property...puts socialist governments in a position to dictate. It is a man who signed an oil agreement with Pierre Trudeau that will help destroy the Alberta oil industry.... Lougheed and Trudeau have, along with unequal Western representation in Ottawa, brought us to one alternative, independence. 24

Perhaps the most critical reason why the provincial government cannot convince Albertans on the security of their property rights is, quite simply, that people do not want to be convinced. Rather than responding to government assurances based on a reading of the

constitution accepted by the majority of constitutional experts in the country, many people are choosing to accept a position the whole of which is based on an as yet hypothetical scenario of the central government reaching into people's cache of possessions and taking away a deed, a television set, or a motor-home. The angry anticipation and indignant hostility with which many Albertans await such an event is, at best, disproportionate to the evidence which would give rise to the suspicion. This phenomenon indicates not only that people are deeply angry but that they are enjoying the opportunity of venting this anger. The provincial government's attempts to diffuse the situation cannot succeed under these circumstances.

Such then is the essence of the volatile political issue of property rights: its calls forth all the emotions which would arise if property rights really were in immediate danger without providing the concomitant evidence making legitimate and reasonable the holding of these emotions. Because the issue is grounded in suspicion,[25] it is immune to injury from rational argumentation and refutation but can remain alive only as long as it continues to fulfill one of its most critical purposes to the people of Alberta, that of providing a popular vehicle through which they can express outrage against and frustration with the Prime Minister and his government. Because the property rights issue proclaims no truth except in this specific emotional climate, it has no life independent of those public sentiments arising from impermanent circumstance. If Pierre Trudeau

were to step down as Prime Minister, or if the economy were suddenly to improve, or if another political party were able to win over Albertans with a new controversy, then the raison d'etre of the property rights issue would die and with it the issue itself. In short, an issue the existence of which is inextricably tied to people's depair and frustration simply cannot endure beyond the emotional climate which gives it rise.

NOTES

1 Federal government statistics show that Canadian farm bankruptcies have increased by more than 50% (Edmonton Journal, 18 April 1982). While Alberta farmers have managed better than their counterparts in other provinces, the economic downturn is still a serious source of concern. The net income of Alberta's 43,000 farmers, for example, is expected to drop from $973 million in 1981 to $793 million in 1982 (Edmonton Journal, 2 May 1982).

2 No definitive statistics on mortgage foreclosures are kept. However, a leaked federal government document estimates that 40,000 homeowners face foreclosure over 1981-82 (Calgary Herald, 22 October 1981).

3 The February Insolvency Bulletin records 1,441 Alberta consumer bankruptcies reported in 1981 and 619 Alberta business bankruptcies reported for the same year (Insolvency Bulletin, 2, No. 2, February 1982, pp. 112-113).

4 The Financial Post places the central bank interest rates for the week of June 15 at 15.87% (Financial Post, 12 June 1982).

5 Statistics Canada reports unemployment to be 9.6% in April, up from 9% in March (Edmonton Journal, 7 May 1982).

6 Henry Campbell Black, Black's Law Dictionary, 5th edition (St. Paul: West Publishing Company, 1979), p. 1095.

7 Edmund Burke, Reflections On The Revolution In France ed. Thomas H.D. Mahoney (Indianapolis: Bobbs-Merrill Company, Inc., 1955), p. 58.

8 John Locke, Second Treatise of Government ed. Thomas P. Pearson (Indianapolis: Bobbs-Merril Company, Inc., 1952), p. 17.

9 Walter Lippman, The Method of Freedom (New York: Macmillan Company, 1935), pp. 101-102.

10 Leopold Kohr, "Property and Freedom" in Property In A Humane Economy: A Selection Of Essays Compiled by the Institute For Humane Studies ed. Samuel L. Blumenfeld (LaSalle, Open Court Publishing Company, 1974), pp. 52-53.

11 Kohr, pp. 67-68.

12 James W. Wiggins, "The Decline of Private Property And The Diminished Person" in Property In A Humane Economy: A Selection of Essays Compiled by the Institute For Humane Studies, p. 71.

13 The Alberta Report, in a March 20, 1981 edition, outlines Ruth Gorman's background in the area of human rights. Her involvement ranges from acting as an advisor to Prime Minister Diefenbaker in the writing of the Canadian Charter of Rights to assisting the U.N. in the drawing up of its Charter of Human Rights. It is also notable that Gorman turned down the offer of a seat in the Canadian Senate. (The Alberta Report, 20 March 1981, p. 3)

14 Ruth Gorman, "Our stand on property rights", in The Independencer March 1982, 6, Vol. 1, p. 5.

15 Gorman, p. 5.

16 Ruth Gorman, "Constitution condemned" in The Western Canadian, November 1981, p. 3.

17 Gorman, p. 3.

18 Gorman, p. 3.

19 Gorman, p. 3.

20 Charles A. Reich, "The New Property" in Property: Mainstream and Critical Positions, ed. C.B. MacPherson (Toronto: University of Toronto Press, 1978), p. 181.

21
"Canada's Constitution: A Proud Moment for Alberta", Government of Alberta. Note: The Alberta Government's main argument on the security of property rights is in this pamphlet.

22
It is recognized that those who write letters to the editor in no way represent a cross section of the views of Albertans. Nonetheless, they provide a useful insight into the opinions of the more vocal persons in the province.

23
John Adamson, Letter, Edmonton Journal, 4 March 1982.

24
R.W. Evans, Letter, Calgary Herald, 3 March 1982.

25
Garth Stevenson notes that:

> To anyone not afflicted with paranoia it should be obvious that 10 Canadian governments, federal and provincial, representing far different political parties, would not engage in a conspiracy to abolish the right of private property. Indeed, one must be disturbed at a climate of opinion in which such a belief could be seriously entertained. (Garth Stevenson, "Property rights are not imperiled", Financial Post, 8 May 1982)

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